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NO. 90-331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CORINTH PIPEWORKS, S.A.,
Petitioner

v.

GULF CONSOLIDATED SERVICES, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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LIST OF PARTIES

Corinth Pipeworks, S.A.
Gulf Consolidated Services, Inc.
American Motorists Insurance Company

RELATED CORPORATIONS

Respondent Gulf Consolidated Services, Inc.'s parent corporation is the Mead Corporation. American Motorists Insurance Company is one of the Kemper Group of insurance companies.

TABLE OF CONTENTS

	Page
LIST OF PARTIES	I
TABLE OF CONTENTS	II
TABLE OF AUTHORITIES	III
I. INTRODUCTION	1
II. THE PETITION SHOULD BE DENIED	3
III. CONCLUSION	6

TABLE OF AUTHORITIES

CASES	Page
Asahi Metal Industry Company, Ltd. v. Superior Court of California, 480 U.S. 102 (1987)	3, 4, 5, 6
Gulf Consolidated Services, Inc. v. Corinth Pipeworks, S.A., 898 F.2d 1071 (5th Cir. 1990).	4

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I. INTRODUCTION

In its Statement of The Case, Petitioner has left out several facts that were obviously significant to the District Court and the United States Court of Appeals. Respondent seeks to bring those facts to the Court's attention by way of this Introduction.

As the Record demonstrates, the basis of the underlying suit and the Judgment of the District Court was the breach of a warranty by Corinth Pipeworks, S.A. (Corinth). Corinth expressly warranted that the oilfield casing that it sold to Gulf Consolidated Services, Inc. (GCS) complied with the specifications of the American

Petroleum Institute (API), an organization based in Dallas, Texas. Corinth was entitled to make this warranty by virtue of its licensing agreement with API. The API warranty was material to both GCS and Corinth. GCS wanted to purchase only API oilfield tubular products, and Corinth's sole market for API oilfield tubular products was Houston, Texas. In fact, Corinth representatives made periodic trips from Greece to Houston, Texas to call on its Houston customers.

The particular purchase transaction involved in this suit was not an isolated occurrence. It was one of forty-two (42) sales Corinth made to its four Houston customers during the years 1978 through 1985. Corinth received $73,000,000 from its Houston customers as a result of these sales. Each of the sales involved terms similar to those of the transaction in question, including the establishment of a Letter of Credit at a Texas bank naming Corinth as a beneficiary. Corinth also carried the casing in question and other shipments of casing from Greece to Houston, as the charterer of various vessels.

The particular casing involved in this suit was received by GCS in Houston, sold to United Pipe and Supply in Midland, Texas and subsequently delivered to Wayman Buchanan for use on the Neely No. 1 well in Wheeler County, Texas. The casing was installed in this well and subsequently failed because of weld seam defects that demonstrated that the casing was not manufactured in accordance with API specifications, as warranted by Corinth.

A federal magistrate, a federal District Court, and the United States Court of Appeals for the Fifth Circuit have all determined that Corinth had sufficient "minimum

contacts" with Texas and that it was fair and reasonable to require Corinth to defend this suit in Texas. The foregoing contacts recited above, most of which were omitted from Corinth's Petition for Writ of Certiorari, clearly establish that the magistrate, the District Court, and the United States Court of Appeals all correctly decided that Corinth was subject to personal jurisdiction in Texas.

II. THE PETITION SHOULD BE DENIED

The basis of Corinth's Petition is its assertion that the opinion of the United States Court of Appeals for the Fifth Circuit in this case allegedly conflicts with this court's opinion in *Asahi Metal Industry Company, Ltd. v. Superior Court of California.*[1] Unfortunately, Petitioner's contention misses the holding of this Court in *Asahi* and the holding of the United States Court of Appeals in this case. Therefore, the Petition should be denied.

According to its Petition, Corinth apparently acknowledges that it did have "minimum contacts" sufficient for the exercise of personal jurisdiction. It appears that Corinth's only argument is that it was not fair and reasonable to require Corinth to defend this case in Texas. In *Asahi,* this Court determined that "minimum contacts" sufficient for the exercise of personal jurisdiction were not established, and the exercise of personl jurisdiction over Asahi Metal was unreasonable and unfair.[2] However, this Court also noted that once minimum contacts were established, the interests of the plaintiff and the forum in the exercise of jurisdiction would justify even serious burdens placed on a foreign defendant.[3]

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1. 480 U.S. 102 (1987).
2. 480 U.S. at 116.
3. *Asahi,* 480 U.S. at 114.

Unlike *Asahi,* the interests of GCS and Texas in this case, as noted by the Court of Appeals, are not slight, and Corinth's relationship with Texas is significant.[4] Corinth marketed and manufactured the casings in question for its Texas market. These casings were warranted to be manufactured in accordance with API specifications, and Corinth's sole market for such products was Houston, Texas. In fact, Corinth made forty-two sales of API oilfield tubular goods totalling over $73,000,000 to its customers in Houston, Texas during the years 1978 through 1985. Corinth even delivered the casings, as the charterer of numerous vessels, from Greece to Texas. Of course, Corinth's defective product, intended for use in Texas, failed in Texas, and caused economic harm to a Texas resident and a Texas corporation.

In the opinion of the Court of Appeals, all of these factors sharply distinguished the factual situation of this case from the slight interests of a Japanese corporation and California in that suit.[5] In fact, the Court of Appeals concluded that the unfairness to Corinth, given the foregoing factors, was relatively insignificant, especially since the suit arose out of one of the sales it had made in its sole market for the product.[6]

It is obvious the opinion of the Court of Appeals in this case was consistent with the principles enunciated by this Court in *Asahi.* Certainly, this Court was not suggesting that all foreign defendants who have no significant physical presence in the United States are exempt

4. *Gulf Consolidated Services, Inc. v. Corinth Pipeworks, S.A.,* 898 F.2d 1071, 1073-74 (5th Cir. 1990).

5. *Gulf Consolidated Services, Inc.,* 898 F.2d at 1074-75.

6. *Gulf Consolidated Services, Inc.,* 898 F.2d at 1075.

from personal jurisdiction in the courts of this country. In fact, this Court stated that designing a product for a market in the forum state, soliciting business in the forum state, regular contacts with customers in the forum state, and establishing channels for the delivery of the foregoing defendant's products in the forum state was additional conduct to be considered in determining whether it was reasonable and fair to exercise personal jurisdiction over a foreign defendant.[7]

Of course, such additional conduct was not present in *Asahi*;[8] however, there is significant evidence of such additional conduct by Corinth in this case.[9] Thus, the only difference between this case and *Asahi* are the facts to which the principles of personal jurisdiction delineated by this Court are applied. Quite simply, Corinth purposefully directed its activities towards Texas and Asahi Metal Industry Company did not purposefully direct its activities towards California. This factual difference does not create a conflict between the Court of Appeals decision in this case and the opinion of this Court in *Asahi*. It certainly does not support the granting of Corinth's Petition.

The mere fact that the Court of Appeals reached a different conclusion in this case than this Court reached in *Asahi* does not create a conflict. Furthermore, the Court of Appeals opinion in this case does not cast any uncertainty over foreign purchases. Clearly, if a foreign corporation routinely and regularly markets its products to a particular market in the United States, serves that mar-

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7. *Asahi*, 480 U.S. at 112.

8. 480 U.S. at 112-13.

9. *Gulf Consolidated Services, Inc.*, 898 F.2d at 1973-75.

ket consistently and substantially over a substantial period of time, and gains significant economic benefits from that relationship, then the foreign defendant should reasonably expect to be haled into the courts of that market for claims arising out of the products it markets there. Such a conclusion is consistent with this Court's opinion in *Asahi* and the Court of Appeals opinion in this case.

CONCLUSION

As is established above, there is no conflict between the opinion of the United States Court of Appeals for the Fifth Circuit in this case and this Court's opinion in *Asahi Metal Industry Company v. Superior Court of California,* 480 U.S. 102 (1987). Since that is the only reason given by the Petitioner for the issuance of a Writ of Certiorari, the Petition must be denied.

Respectfully submitted,

By: _____
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